IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 279 of 1984

with

FIRST APPEAL No 280 of 1984

with

FIRST APPEAL NO. 281 OF 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

HEIRS OF VIRJI @ HIRA RANCHHOD

Appearance:

MS. MAYA DESAI FOR MR MD PANDYA for the appellants in all appeals.

MR RA MISHRA for Respondent No. 1-1/7 in all appeals.

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 27/11/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

All these appeals are being disposed of by this common judgment and order as they are arising out of the common judgment and award dated 20th June, 1983 passed by the learned Motor Accident Claims Tribunal(Main), Bhavnagar in Claim Petition nos. 93, 94 and 114 of of 1982.

2. First Appeal no.279 of 1984 arises out of claim petition no. 94 of 1982 filed by the legal heirs and representatives of the deceased Virji alias Hira Ranchhod. First Appeal no. 280 of 1981 arises out of claim petition no. 93 of 1982 filed by the heirs and legal representatives of the deceased Haribhai Gordhanbhai and First Appeal no. 281 of 1984 arises out of the claim petition no.144 of 1982 filed by the injured claimant Manjibhai Anandbhai.

3. All these three appeals arise out of the aforesaid claim petitions which were filed by respective claimants because of the vehicular accident which took place on 9th November, 1981.

4. There is a direct evidence of injured eye witness Manjibhai Anandbhai exh. 19, the claimant of claim petition no. 144 of 1982. According to his evidence, four persons were travelling on the motor cycle which was driven by the deceased Virjibhai aged about 35 years. It was proceeding from village Bela to village Trapaj. Deceased Haribhai Gordhanbhai, one minor Ashok Dharji and Manji Anandbhai were sitting on the pillion seat at the relevant time. Haribhai Gordhanbhai was sitting just next to the driver Virji followed by minor Ashok. Manji was sitting last on the pillion seat. Out of these four persons, the driver Virji aged 35 years died on the spot. Haribhai aged 19 studying in 11th standard also died in the accident, whereas minor Ashok survived without any major injury. However, Manji Anandbhai aged 18 years also received some injuries.

5. As per the evidence of Manji Anand exh.

19, motorcycle was driven by the deceased Virji with extreme care and caution and he was going at a very slow speed on his correct side of the road. The accident occurred when the motorcycle reached at a distance of about 25 to 30 ft. after they arrived at the main highway. At that time, ST bus no. GTS 4334 coming from opposite direction driven by driver Rajabhai Mavjibhai came from the opposite direction in excessive speed and dashed with the right front side portion of the motorcycle on its wrong side. The bus driver did not apply brake even after the accident and it could be stopped at a distance of about 25 to 30 ft. from the place of the accident. This evidence of witness Manjibhai remained unshaken in his cross examination. In fact, there was no cross-examination whatsoever on this point that the driver of the motor cycle was driving at a very slow speed and the bus driver was coming at excessive speed and dashed with them on the wrong side of the road.

6. Considering the panchnama at exh. 41and the evidence of the injured eye witness Manjibhai, the learned Tribunal held that the driver of the bus was solely negligent for the accident. The driver of the bus could not step into the witness box because during the pendency of the case as he died during the pendency of the case before the Tribunal.

Considering the evidence of widow of Haribhai Gordhanbhai, the learned Tribunal came to the conclusion that the net income of the deceased Harjibhai could be assessed at Rs. 2000/- per month and deducting Rs. 500/- for his personal use, it would come to Rs. 1500/- per month, which would come to Rs. 18000/- per year. Considering the age of the deceased Harji who was 35 years of age at the time of the accident, the learned Tribunal thought it fit to apply multiplier of 15 years. Thus, according to the learned Tribunal, the legal heirs of thedeceased claimants would be entitled for Rs. 2,70,000/- by way of loss of prospective earning on account of untimely and premature death of the only bread winner, the deceased Harji. The learned Tribunal also held that the claimants were also entitled to Rs. 5000/- by way of loss of expectancy of life. Thus, in all they were entitled for Rs. 2,75,000/as compensation. As against that, the claim of the claimants was only Rs. 2 lac. Therefore, the learned Tribunal fully allowed the claim petition of the claimants and awarded Rs. 2 lacs. Hence, this appeal at the instance of S.T.

7. We may state here that out of these

appeals, learned counsel Ms. Desai appearing for learned counsel Mr. Pandya for the appellant Corporation was not in a position to seriously challenge the impugned award passed by the learned Tribunal in Motor Accident Claims petition no. 93 of 1982, where out of claim of Rs. 40,000/-, Rs. 38000/- was awarded by the Tribunal to the claimants who were the parents of the deceased Haribhai Gordhanbhai who died at the young age of 19 years. Considering the age, the parents who are aged 41 years and 39 years respectively, the learned Tribunal has rightly awardd Rs. 38000/- and eve if it would have been challenged seriously, then also we would not have interfered with the award.

8. We may further state that the claimant Manjibhai who was injured in the accident was aged only 18 years. He had filed the claim petition claiming Rs. 25000/- for his personal injuries. However, the learned Tribunal has awarded only Rs. 7050/-. Considering the age of the injured Manjibhai and the injuries received by him and the amount awarded by the Tribunal, we are of the considered opinion that the learned Tribunal has awarded reasonable amount which cannot be interfered with by this Court in this appeal. Ms. Desai was also not in a position to challenge the same.

9. This brings us to the First Appeal no. 279 of 1984 filed by the appellant corporation against the award passed by the learned Tribunal in MAC Petition No. 94 of 1982 whereby the learned Tribunal has awarded the entire claim of Rs. 2 lacs claimed by the claimants who are legal heirs of the deceased Virji alias Vira Ranchhod.

10. Learned advocate Ms. Desai for the appellant vehemently submitted that the learned Tribunal ought to have held that driver of the small vehicle i.e. motor-cycle which was driven by the deceased Virji alias Hira Ranchhod was equally negligent. She submitted that when the deceased was driving the small motor cycle with four persons, then the Tribunal should have come to the conclusion that there was negligence on the part of the driver of the motorcycle. She submittd that one of the pillion riders was having a purse with him. The panchnama shows that there was a pot of ghee lying there at the place of the accident. In that view of the matter, it would be extremely difficult for the driver of the vehicle to control his vehicle and because of that, the accident must have taken place, therefore, the driver of the bus cannot be held solely negligent for the accident. It is true that the deceased Virji aged 35

years was carrying four persons on his motor cycle, but we cannot overlook the fact that all the three other pillion riders were aged 19, 18 and 7 years only. One of them was minor and two were in their teen age. In that view of the matter, we cannot hold that the driver of the motor vehicle was negligent or he had contributed to some extent in the accident. When there is a clear evidence of the eye witness Manji exh. 19, on the point of accident which is duly corroborated by the panchnama exh. 41 which is duly considered by the learned Tribunal, then we would not like to interfere with the finding recorded by the learned Tribunal on the point of negligence. We have narrated in brief the evidence of Manji exh. 19 and from his evidence, it clearly appears that the driver of the bus was totally rash and negligence in driving the bus. He dashed wtih the motorcycle which was going on its correct side. Even after the accident, he could not stop his bus up to the distance of 25 to 30 ft. There were no brake marks. Both these factors go to show that he was solely negligent because he had driven his bus on its wrong side. In that view of the matter, when there is a solitary evidence of an eye witness Manjibhai which has not been shaken in his cross-examination, then we will not be able to take different view of the matter.

11. Ms. Desai then tried to submit that the learned Tribunal ought not to have awarded the entire claim of Rs. 2 lac to the claimants. She submitted that from the evidence of bai Jiviben, it is clear that there was no actual loss of income because her deceased husband was a businessman and after his death, she was inducted as one of the partners. But, there is an evidence of Babubhai at exh. 22 who has clearly stated that she was inducted as a partner. Jiviben is an illiterate person. Therefore, it is possible that she might have committed a mistake. Even assuming for the sake of argument that she was inducted as a partner in the partnership firm, then also, it would not make any difference because deceased Virji alias Hira Ranchhod was maintaining in all seven persons out of his income which includes four minors, his wife Jiviben and his parents. Even assuming for the sake of arguments that his widow later on started earning, then also, it would not disentitle the minor claimants from claiming compensation.

12. Except the aforesaid submissions, no other submission was made by the learned counsel Ms. Desai in all these appeals.

13. In view of the above discussion, we do

not find any reason to interfere with the same in these appeals. Accordingly, all these appeals fail and are hereby dismissed with costs.

(B.J.Shethna,J)

(Kundan Singh,J)

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